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## SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

RIN: 3245-AE05

Small Business Development Center Program Revisions

AGENCY: U.S. Small Business Administration

ACTION: Advance Notice of Proposed Rulemaking

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on this Advance Notice of Proposed Rulemaking (ANPRM) regarding the Small Business Development Center (SBDC) Program (the Program). Specifically, the SBA is seeking comments on development of potential proposed amendments to current regulations governing the Program, which is authorized by the Small Business Act. This ANPRM is being issued to commence the consultative process with stakeholders to examine several issues such as International Trade counselor certification requirements, steps to selecting State/Region Directors, procedures for international travel, clarifying the use of carryover funds and procedures regarding the determination to affect suspension, termination or non-renewal of an SBDC's cooperative agreement to name a few. This ANPRM also addresses other policy and procedural changes necessary for the implementation of the Program.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AE05 by one of the following methods (1) Federal Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov), following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: J. Chancy Lyford, Deputy Associate Administrator, SBDC Program, 409 Third Street, SW, Room 6253, Washington, DC 20416. SBA will not accept comments submitted by email to this Advance Notice of Proposed Rulemaking.

SBA will post all comments to this Advance Notice of Proposed Rulemaking on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to the U.S. Small Business Administration, J. Chancy Lyford, Deputy Associate Administrator, SBDC Program, 409 Third Street, SW, Room 6253, Washington, DC 20416, or send email to [sbdcregs@sba.gov](mailto:sbdcregs@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public. Requests to redact or remove posted comments cannot be honored and the request to redact/remove posted comments will be posted as a new comment. See the [www.regulations.gov](http://www.regulations.gov) help section for information on how to make changes to your comments.

FOR FURTHER INFORMATION CONTACT: J. Chancy Lyford, Deputy Associate Administrator for the SBDC Program, at 202-205-6766 or [chancy.lyford@sba.gov](mailto:chancy.lyford@sba.gov).

SUPPLEMENTARY INFORMATION: A. Statutory Authority

The Small Business Development Center (SBDC) Program (the Program) was established as a pilot program in 1977 and was later officially authorized in 1980 by the

Small Business Development Center Act of 1980 (Pub. L. 96-302) now codified in section 21(a) of the Small Business Act, 15 U.S.C. 648. According to Section 21(a)(1) the purpose of the Program is to assist in establishing small business development centers explicitly to provide “management and technical assistance” to small businesses. Section 21(a)(3)(A) requires the SBA to consult with the recognized association of SBDCs in any rulemaking action for the Program. The issuance of this ANPRM is for purposes of undertaking the consultative process required by this section.

#### B. Background

The SBDC Program provides small businesses and aspiring entrepreneurs with a wide array of technical assistance to help support and strengthen business performance and sustainability as well as assist the U.S. economy by the creation of new business entities. Under the statute governing the SBDC Program, the Associate Administrator of Office of Small Business Development Centers (AA/OSBDC) holds responsibility for the general management and oversight of the SBDC Program by means of a cooperative agreement with the Recipient Organization.

The SBDC rules were last revised in 1995, *See* 60 FR 31506 (June 13, 1995). However, statute authorizing the SBDC Program has been amended numerous times since the last rulemaking. The annual Program Announcement and Notice of Award have become SBA’s primary means of adjusting SBDC program rules and policies in the wake of statutory and other changes. The SBA believes it is time for regulations outlining guidance for the policies and procedures for the SBDC Program. It is the intention of the SBA that by soliciting public comments through this Advanced Notice of Proposed Rulemaking (ANPRM), the SBDC Program policies and procedures will be updated to

reflect current best practices, become more streamlined, and less onerous on the SBDC grantees and SBA. SBA would like comment on changes to any of its existing policies and procedures as well as any new ideas for how to best implement and operate the SBDC Program.

Because of the amount of information contained within this ANPRM to address the necessary modifications, it is SBA's intention that the public, especially the recognized association and other stakeholders in the Program, be given ample opportunity to submit comments and help shape any possible future regulatory proposals.

This ANPRM solicits public comments on, among other things, implementation of statutory amendments, current practices, guidance on new grantee applicants, and provisions regarding the collection and use of individual SBDC client data. Many of the statutory changes have been significant, including amendment to the types of entities that are eligible to apply to be an SBDC grantee.

### C. Definitions

The SBA asks for comment on: whether or not new definitions for defining Program requirements are needed, if there are other terms that are missing from the list below that need defining, and the draft definitions themselves.

The SBA seeks comment on the possible addition of and content of the following new definitions:

- Associate Administrator/ OSBDC. The individual who is statutorily mandated to manage the SBDC Program.

- Carryover funds. Unobligated federal funds reallocated from one funding period to the next for specified purposes through an amendment to the Notice of Award.
- District Office. The local SBA office that, among other responsibilities, is charged with SBDC grant oversight responsibilities by ensuring: compliance with the Notice of Award; the local small business market needs are met by the SBDC; the regularly scheduled reviews are completed as required; and by collaborating with the SBDC to perform joint events and trainings.
- State Director. An individual for whose time and effort is 100% allocated to overseeing and managing the SBDC grant and other grants that provide comparable management and technical assistance to the small businesses community in accordance with the cooperative agreement.
- Key personnel. SBDC State/Region Directors and SBDC Service Center Directors or managers and International Trade Center Directors.
- Matching Funds. Funds that will be supplied to meet the statutory match requirements of the SBA SBDC grant. Matching Funds may include cash and non-cash equivalents, provided those forms of matching comply with the percentage restrictions on non-cash contributions and source restrictions on both forms of funds.
- Notice of Award (NOA). Also known as the Cooperative Agreement, the legal agreement between SBA and a Recipient Organization containing the terms and conditions under which SBA provides federal funds for the performance of SBDC activities.
- Office of Small Business Development Centers (OSBDC). The main program office which manages the funding, budget, programmatic oversight, and the

establishment and maintenance of all program policy over the national SBDC network.

- Program funds. Also referred to as Project funds and defined as all funds authorized under the Cooperative Agreement including, but not limited to, federal funds, cash match, non-cash match from indirect costs, in-kind contributions, program income revenues, and funds authorized or reported as carryover.
- Project Officer. The individual in the SBA District Office appointed by SBA as the primary local contact for the SBDC. This person conducts regular compliance oversight as required by OSBDC working in conjunction with the Program Manager as well as other responsibilities.
- Proposal. Also known as the Application, this is the written submission by a new Applicant Organization or an existing Recipient Organization describing its projected SBDC activities for the upcoming Budget Period and requesting federal funding for use in its operations.
- Prior Approval. The written concurrence from the appropriate SBA official for a proposed action or amendment to the SBDC Cooperative Agreement.
- Recognized Association. The association established by statute whose members are SBDCs for the purpose of representing the SBDC's interests.
- SBDC Service Center Director. The individual responsible for SBDC program implementation and management at a Service Center within an SBDC network.
- Specialized Services. SBDC services other than counseling or training, e.g., extensive research, hiring outside consultants for a particular client, translation services, etc.

- Sub-recipient Organization/Subcenters. An entity, identified in the Cooperative Agreement, having a written agreement with the Recipient Organization that (1) receives federal financial assistance; and/or (2) administers matching resources for purposes of conducting SBDC activities.

#### D. General

SBA also seeks comment on any other information that should be considered for possible future regulatory proposals, including whether the addition of a general description of the authority establishing SBDCs, the governing documentation (Program Announcement), and the administration of the Program (Notice of Award) should be included in a future rulemaking.

#### E. Applications

By statute, any Women's Business Center operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656) is now eligible to apply to be a new SBDC Recipient Organization. This ANPRM seeks comments on how to address statutory requirements for an SBDC Network to primarily utilize institutions of higher education and Women's Business Centers as new Service Centers.

SBA invites comments on the following:

Regarding the application procedures, how should SBA instruct all SBDC applicants to comply with the annual Program Announcement? Possible topics to comment on could include program integrity, allowable costs, conflicts of interests as well as format, conditions, submission requirements and due dates, for their new or renewal application to receive consideration.

Regarding new applications, how should the SBA clarify which Applicants within the State or Region of service are eligible to be an SBDC Recipient Organization? SBA believes a clarification is advisable regarding its standard policy of recruiting and selecting New SBDC Recipient Organizations using a fair and open competitive process, including an objective review and on-site sufficiency review before the Associate Administrator (AA) of the OSBDC makes a final selection.

Regarding renewal applications, what should SBA propose to describe the procedure when a Recipient is not renewed, either by SBA's or the Recipient's choice? Does any other aspect of renewal need to be considered for program regulatory proposals? Comments are requested as how best to update the process, including details on the negotiations with the District Office and how the Recipient Organization must submit the renewal application to the SBA.

#### F. Operating Requirements

This ANPRM requests comments on how to incorporate these statutory requirements in a future rulemaking.

The SBA seeks comments on the following:

Comments are requested on how each SBDC could comply with the requirement to maintain export and trade certified counselors on staff? Should there be a minimum number of export and trade certified counselors on staff? If so, what should be the minimum? Comments are requested on how the AA/OSBDC should set policy development and program administration, in consultation, to the extent practicable, with the Recognized Association

Comments are requested on how to clarify the specific identification of a "Small Business Development Center" and whether that name should be a part of the official



name of every SBDC Lead Center and Service Center within the SBDC network? How should SBA consider other names, such as those grandfathered in or subsequently waived by the AA/OSBDC? SBA welcomes comments on any other information needed to be considered for program regulatory proposals at this time.

Currently, there are SBDC Networks with other identifying characteristics, such as “Small Business *Technology* Development Centers.” How should an SBDC Network seeking the designation as a “Small Business Technology Development Center” operate in accordance with SBA policies and procedures? Should there be different rules for Small Business Technology Development Centers? If so, what should they be?

Comments are requested on how the selection and retention of the SBDC State/Region Director should be accomplished. How should the policy guidelines already contained in the current Program Announcement and Notice of Award be incorporated? In particular, how should SBA mandate a Recipient Organization to have a State/Regional Director from another SBDC as a member of a selection panel? How much time should a State Director devote specifically to the SBDC grant? In addition, how much time should pass before any vacancy is reported to SBA? What percentage of their time and efforts should an Interim State/Region Director allocate to the SBDC program? What length of time should the appointment period for such Interim State/Region Director be? Should more time be needed for the Recipient Organization to hire a permanent State/Regional Director, how should it obtain prior approval from the AA/OSBDC?

The responsibilities of SBDC State /Region Directors are currently set forth in policy in the Program Announcement and Notice of Award. What percentage of

time should the Director dedicate to the SBDC? How much of the Director's time should be devoted to other projects which complement the SBDC mission? Can the position be held by a company or contractor or other choice? What should be the minimum direct reporting authority that a State Director should have? Should it be to that of a college dean in a university setting or the third level of management or administration within a State Agency or should some other level within the organization be considered? If so, what should that level be?

Should SBA consider an amendment stating the names, addresses and phone numbers of small businesses or individuals receiving counseling assistance from an SBDC Network cannot be released to any person or entity outside of the SBDC without the consent of the client? Should a possible exemption be made if: SBA believes it necessary for grant oversight activities; SBA wants to conduct allowable client surveys or; the SBA Administrator is ordered to make such a disclosure by a court?

How should a SBDC Lead Center or a Sub-recipient Organization enter into a contract or grant with a Federal department or agency to provide specific assistance to small business concerns? Prior to bidding on a non-SBA federal award or contract, how should potential conflict of interest situations be handled by the SBDC Lead Center or Service Center? What should the SBDC Lead Center or Service Center be required to obtain from the AA/OSBDC regarding the subject and general scope of the award or contract to ensure that there is no conflict of interest with the SBA? How should the notification procedure indicate to SBA how the additional award will not conflict with the Cooperative Agreement and identify how the additional funding will be tracked to ensure separate sources and uses of funds?

#### G. Notice of Awards/ Cooperative Agreements

Section 21(k)(3)(A) of the Small Business Act (15 U.S.C. 648(k)(3)(A)) states that in extending or renewing a cooperative agreement of a Small Business Development Center, the Administration shall consider the results of the examinations and accreditation reviews. In addition, 15 U.S.C. 648(k)(3)(B) states the Administration cannot renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the AA/OSBDC can waive such accreditation requirement, at his or her discretion, upon a showing that the center is making a good faith effort to obtain accreditation. SBA seeks comment on how best to incorporate these statutory changes into a proposed rulemaking.

The SBA seeks comments on the following:

What language should SBA propose regarding cooperative agreements and contracts, including the incorporation of a common set of performance measures for SBDC Networks established by the SBA? What should the District Office, in conjunction with OSBDC, negotiate with the Lead Center? Some ideas include annual goals, milestones, activities for the cooperative agreement, or other information needed to be considered for the program?

For procurement/contracting policies and procedures, what should Recipient Organizations and Sub-Recipient Organizations have in the way of written procurement and contracting procedures in order to comply with the applicable federal procurement standards, the procurement procedures of the Recipient Organization, and openly

compete their procurements? Are there any other issues regarding procurement/contracting that should be considered for program regulatory proposals at this time? While this and many other references are already established policy in the Program Announcement and Notice of Award, the SBA welcomes comments on new ideas, procedures and policies.

In the event of a Disaster, the AA/OSBDC can amend one or more cooperative agreements to authorize unanticipated out-of-state travel by SBDC personnel responding to a need for services in a Presidentially-Declared Major Disaster Area. How should notification of this type of authorization be accomplished? Some possible ideas are either through the publication of an SBA procedural or policy notice or through a Lead Center individual approval approach? Are there other or issues related to any program travel information that should be considered for program regulatory proposals at this time? What compliance standards should proposed and actual travel costs incurred under an emergency authorization use? Should they comply with the established rule, Program Announcement and OMB guidelines?

How should SBA clarify the conditions and procedures for effecting a suspension, termination or non-renewal of an SBDC's cooperative agreement? How should SBA set forth the administrative review procedures? Are there any other issues related to renewal needed to be considered for program regulatory proposals at this time? What should SBA consider in developing a new Administrative Procedure for Suspension, Termination and Non-Renewal? Should SBA include processes for taking action; notice requirements; relationship to government-wide suspension; and debarment? Also, what standards should SBA consider for administrative review of suspension, termination and

non-renewal actions? Should SBA include details on a prescribed format; service; timeliness; standard of review; conduct of the proceeding; evidence; and decision? SBA seeks comments on the following.

(1) *Termination*. How should SBA consider whether a recipient organization can incur further obligations under the Cooperative Agreement after the date of termination without express authorization to do so in the Notice of Termination? Are there other issues related to termination for program regulatory proposals? Should award funds be available for obligations incurred after the effective date of termination unless expressly authorized under the Notice of Termination or are there other ways to handle obligations incurred after termination? When a Cooperative Agreement has been terminated, how many days should the Recipient Organization have to submit final closeout documents to SBA? Can extenuating circumstances be considered and how should they be handled?

(2) *Non-Renewal*. How can SBA elect not to renew a Cooperative Agreement with a Recipient Organization? In undertaking a non-renewal action, how should SBA either choose not to accept or consider any application for renewal from the Recipient Organization? Under what circumstances could the Agency choose not to exercise option years remaining under the Cooperative Agreement? When would a Cooperative Agreement not be renewed? Should the Recipient Organization continue to conduct project activities and incur allowable expenses until the end of the current budget period? If a Recipient Organization decides to not renew its grant, must it notify the District Director and send a letter of intent to withdraw to the AA/OSBDC no less

than 180 days before the end of its performance period or would there be another time period that would be more acceptable?

(3) *Suspension*. When should the suspension of a Recipient Organization begin? Should it begin on the date the Notice of Suspension is issued? How long should the period of suspension last? Should it last no longer than 6 months? At the end of the period of suspension, or any point during that period, how should the SBA either reinstate the cooperative agreement or commence an action for termination or non-renewal?

Why should the SBA be obligated to reimburse any expenses incurred by a Recipient Organization while its cooperative agreement is under suspension? Where SBA decides to lift a suspension and reinstate a Recipient Organization's cooperative agreement, under what circumstances should the Agency consider reimbursing a Recipient Organization for some or all of the expenses it incurred in carrying out project objectives during the suspension period? Should SBA state that there is no guarantee that the Agency will accept expenses incurred in furtherance of project objectives during the period of suspension or is there some other way this should be handled?

SBA seeks comment on whether, or not to add the following to the list of causes for suspension actions and if there are other causes not listed that should be considered:

- Poor performance;
- Unwillingness or inability to implement changes to improve performance;
- Failure to implement recommendations from programmatic reviews and/or examinations within the time frame established by the AA/OSBDC;

- Failure to implement recommendations from accreditation reviews within the time frame established by the accreditation committee and by the AA/OSBDC;
- Failure to maintain adequate client service facilities or service hours;
- Failure to maintain and enforce a conflict of interest policy;
- Failure to provide records to the SBA or the SBA OIG on demand;
- Failure to maintain records and;
- Failure to maintain and enforce a procurement policy.

How should SBA define the closeout procedures to be followed when an SBDC Lead or Service Center has left the program, either voluntarily or involuntarily to ensure that Program funds and property acquired or developed under the SBDC Cooperative Agreement are fully reconciled and transferred seamlessly between Recipient Organizations, sub-recipients, or other federal programs? How should the responsibility for conducting closeout procedures be vested with the Recipient Organization whose cooperative agreement is not being renewed? How should the procedures be documented and accomplished in accordance with the applicable property standards and the provisions of the SBDC Program regulations? Although stipulated in Subpart D of 2 CFR part 215, the SBA welcomes comments regarding this matter.

#### H. Financial Requirements

SBA seeks comments on the following:

How can SBA clarify the policy for carryover requests? Should a Recipient Organization request that SBA reauthorize any remaining unexpended and unobligated federal funds from their cooperative agreement for use in the ensuing Program/Budget Year or is there other information that needs to be considered when considering how to

obligate the unexpended program funds? Should carryover requests not submitted within the timeframe designated by the AA/OSBDC be considered or are there other issues that need to be considered in extending the timeframe? Should carryover requests adhere to the format stipulated in the Program Announcement for renewal applications and contain the appropriate budget and narrative information along with a justification for the carryover? How should the AA/OSBDC determine whether good cause exists for funds remaining unobligated? If planned obligations could not be carried out because of a bona fide reason, how should the AA/OSBDC determine program objectives would be better served by deferring obligation of the funds to the following year or is there other information that needs to be considered? Should repeated requests for Carryovers (for more than two consecutive years) require substantial justification, and without this justification should they not be approved or is there other information that needs to be considered?

In addition, cash match should equal at least 50% of the SBA funds used by the SBDC. The remaining 50% of matching funds may be provided through allowable combinations of cash, in-kind contributions, or authorized indirect costs. Should costs or the values of third party in-kind contributions count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal Procurement Contract, or any other award of Federal funds or is there other information that needs to be considered? Should in-Kind services performed during the current Budget Period not be carried over to a subsequent Budget Period even if they



were not previously claimed as match or is there other information that needs to be considered?

Should SBA require all foreign travel requests to be submitted to the appropriate District Director/Project Officer and to the OSBDC Program Manager for review and dispatch to the AA/OSBDC for final approval in accordance with the Program

Announcement or is there other information that needs to be considered? Should foreign travel charged to the SBDC cooperative agreement or performed by SBDC staff while on duty for the Recipient Organization be approved in advance in accordance with the Program Announcement or is there other information that needs to be considered?

Should planned foreign travel costs allocable to the SBDC cooperative agreement for SBDC Network staff be approved by the SBA through the annual proposal process and should such planned costs be fully disclosed and justified in the budget narrative for Agency review or is there other information that needs to be considered? Should unanticipated foreign travel be approved in advance in accordance with the Program Announcement or is there other information that needs to be considered?

The SBA prohibits the use of Program Funds for purposes identified as unallowable following OMB guidance, including a Recipient Organization cannot use such funds to provide financial assistance, including subgrants, seed money for venture capital, or fund-raising activities and costs, including financial or capital campaigns, the solicitation of gifts and bequests, and similar activities intended to raise capital or obtain contributions. Should SBA identify further restrictions and prohibitions on expenditures that can be reimbursed from this grant or is there other information that needs to be considered?

SBA also welcomes comments on any other issues that the agency should address in a proposed rulemaking related to the SBDC Programs.

Dated:

Maria Contreras-Sweet,  
Administrator.

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